

Wednesday, 28 May, 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
War Ministry Building
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

Paper No. 974 -- Request by defense
for the processing of certain reports;
and other matters.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth of
Australia.

Reported by

Phillip Kapleau
Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

Mr. Solis Horwitz.

For the Defense Section:

Mr. William Logan, counsel for the
Accused KIDO, Koichi.

For the Secretariat:

Mr. Paul Lynch, Deputy Clerk of the
Court.

The proceeding was begun at 0900.

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THE PRESIDENT: This is paper 974, a request by counsel, Mr. Logan, for the defense; putting what forth, Mr. Logan?

MR. LOGAN: We have had some reports which were prepared for the Foreign Economic Administration by members of the staff of the United States Tariff Commission, which we intend to use in our A,B,C,D Encirclement and I have a sample of the reports here. We have had to have it photostated because it would be too tremendous a job to have them processed, and we would like to know if it would be possible to relax the rules in respect to the number of copies to be furnished the prosecution, the Court, the court reporters, and so forth -- to have it limited to 30 copies.

THE PRESIDENT: Rules are intended to be complied with only when that is possible.

MR. LOGAN: Yes.

THE PRESIDENT: That is the rule of law strangely enough. If you are required to give a notice in the press and there is no newspaper you need not give it. That applies here. If you are required to do a thing and there is no material to do

it you are exempt. Are you satisfied there is no material, Mr. Horwitz?

MR. HORWITZ: In this particular instance, your Honor, we have no objection to it because this is full of tables and charts which would have been quite a job. I suppose if we had not bothered photostating it we might have gotten one of those things under the old rule 6(b)(1), which would have been only the excerpts of the ones to use, but since it has been photostated and we have not much time, we have no objection to following the procedure outlined by Mr. Logan.

THE PRESIDENT: There is an old English decision, *Mayer V. Harding*, on this very point: If you haven't the materials you cannot comply with the rule. Therefore, it does not mean you are paralyzed but that the rule is waived, so you go ahead and provide the copies you can, Mr. Logan.

MR. LOGAN: We will supply thirty copies.

There are several other matters I want to take up. One is this: We have an American witness, and as I understand the rule at the present time of serving affidavits ahead of time, that only applies to Japanese witnesses. The testimony of this American witness we have will be very short.

THE PRESIDENT: The Court made no exception, but probably they had in mind Japanese witnesses.

MR. LOGAN: I think the ruling as announced by the Court was that it only applied to Japanese witnesses.

THE PRESIDENT: Yes. They were the cause of the ruling, really.

MR. LOGAN: That is right. This witness's testimony will be very short.

THE PRESIDENT: Yes. For the time being you can assume that that does not apply to American

witnesses or to European witnesses.

MR. LOGAN: I have another matter and that is the question of the possibility of a recess this summer. Practically all of the attorneys, as you know, have been working under pressure and they feel they should have a vacation during the summer, and we were wondering whether this would be an opportune time to bring it up, so that if the Tribunal feels one should be granted, the time could be fixed at this time, or whether or not we should wait until later in June to make the application.

THE PRESIDENT: I think you should know that the Tribunal met and discussed the question of a vacation and decided that there would be none, that the Court would continue to sit while it had a quorum. It may be necessary, though, for individual members to take a rest. I don't think it will apply in many cases, but it will apply, perhaps, in some; but it is the firm determination of the Court at present to sit throughout while there is a quorum.

MR. LOGAN: We certainly need a vacation, Judge. We have been working under pressure over a year and it is a question of health.

THE PRESIDENT: Personally I never felt fitter in my life, and I have been plugging away for nearly twelve months. Perhaps a majority of the Court feel as I do about it, but sometimes one overestimates his strength and does not realize his weakness until the collapse comes. That applies, perhaps, to others who feel as I do.

MR. LOGAN: This does not preclude us, your Honor, from making an application in court, does it?

THE PRESIDENT: No, it does not.

I realize that we, the Judges, work under better conditions than defense counsel and perhaps many of the prosecution counsel, if not all the prosecution counsel. We live in an excellent hotel that has every comfort. We have air conditioning and everything, but we realize that that is not so in other billets, where prosecution and defense counsel are located. If we determined things with regard to our own convenience and comfort you would never have a chance for a vacation.

MR. LOGAN: Well, we will make our application in court, then.

THE PRESIDENT: We don't want to set you

an example at all. Our conditions are vastly different from yours.

(Thereupon, at 0906, the proceeding was concluded.)

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